IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

CRIMINAL APPEAL No.1078 of 2000

Tajudeen alias Taj ... Appellant

Vs.

State, through the
Inspector of Police,
B-3, Kattur Police Station,
Coimbatore. ... Respondent

* * *
Criminal Appeal preferred under Section 374 Cr.P.C. as against the judgment of conviction and sentence dated 18.10.2000, rendered in Sessions Case No.149 of 2000 by the learned II Additional Sessions Judge, Coimbatore.
* * *
For appellant : Mr.B.Ramamoorthy

For respondent : Mr.J.C.Durairaj,
Govt.Advocate (crl.side)
* * *

JUDGMENT

The accused, who was charged for the offence under Section 302 IPC, convicted for the offence under Section 304(II) IPC and sentenced to undergo Rigorous Imprisonment for a period of ten years and to pay a fine of Rs.1,000/=, in default to undergo further Rigorous Imprisonment for one month by the learned II Additional Sessions Judge, Coimbatore in Sessions Case No.149 of 2000 and the result is this appeal.

2. On 16.10.1998, at about 9.30 p.m., near R.K.Lodge at Lajapathiroy street, Ramnagar, Coimbatore, one Mohan was attacked by the accused over the neck, by using a fused broken tube light, which terminated his life, resulting complaint on the next day, on which basis, having registered a case, investigation proceeded, which brought to surface, according to the final report filed by the respondent, that the accused/appellant is the cause for the death of the said Mohan. Thus, a final report came to be filed before the Judicial Magistrate, followed by committal to the Court of Sessions.

3. The learned II Additional Sessions Judge, Coimbatore, considering the materials produced before him, find no reason to discharge the accused, whereas he found many reasons to frame the charge,

resulting a charge being framed under Section 302 IPC, for which the accused did not concede, resulting trial by the examination of 13 witnesses, marking 18 documents and 9 material objects.

4. The evaluation of the above materials, on the legal scale and the application of the settled legal principles, only made out a case against the appellant/accused under Section 304(II) IPC and therefore, the learned trial Judge convicted and sentenced the appellant/accused for the offence under Section 304(II) IPC, as stated above, which is impugned in this appeal.

5. Brief facts:
(i) Thiru Ponraj-P.W.2, Rajendran @ Ravi, Govindaraj-P.W.4, Tajudeen-accused were working as Kalasis near Alagendra spare parts shop, Nanjappa Street, Coimbatore. They used to collect amounts from the traders for the festivals. Accordingly, in the year 1998, for Deepavali season, amounts were collected and there was dispute between the accused and Mohan (deceased) in sharing the amount, so collected. Despite requests by the accused, the deceased has not paid the amount, thereby causing some grievance.

(ii) On 16.10.1998 at about 6.45 p.m., P.W.2, deceased and the accused, consumed liquor in P.G.Wines situated at Lajapathiroy street and thereafter, till 9.00 p.m., they were chatting together. At that time, the accused questioned the deceased for not giving his due share in the collected amounts, despite lapse of three days and further untoward incident was averted by P.W.2.

(iii) Thereafter, in order to answer the calls of nature, all the three viz. P.W.2, deceased and the accused went to a lane nearby, and while returning also, the accused required the payment from the deceased, which irritated the deceased. Because of the dispute, there was wordy altercation and all of a sudden, the deceased, taking a fused tube light, which was available on the road side, assaulted the accused, causing some injury over the head. This act of the deceased aggravated the accused and the result was, he took the broken tube light and stabbed the deceased on the right side of the neck, causing serious injury, which was witnessed by P.W.2.

(iv) Thereafter, the accused left the place, concealing the broken tube light, used by him, to stab the deceased Mohan, in his shirt, which was witnessed by P.W.4 also, at a later point of time. P.W.2, ascertaining that the breath of Mohan stopped, went to his house, leaving the dead body there itself.

(v) On 17.10.1998 at about 7.00 a.m., P.W.2 went to the house of P.W.1, informed the incident, which took place on the previous night. Ascertaining that Mohan is dead, P.W.1, asking P.W.2 to remain at the scene of occurrence, went to the police station and preferred Ex.P.1 complaint to P.W.10, who registered the case at about 9.30 a.m., under Ex.P.16, sending the printed FIR to the Court, marking the copy to the higher authorities.

(vi) On receipt of the copy, P.W.11, taking the case for investigation, proceeded to the scene of crime, prepared observation mahazar-Ex.P.2 and sketch-Ex.P.17. He had also conducted inquest in the presence of panchayatdards, for which Ex.P.18 report was prepared.

(vii) In order to ascertain the cause of death of Mohan, giving Ex.P.7-requisition, he entrusted the body to P.W.9 for autopsy.

(viii)P.W.7, on receipt of Ex.P.7 and upon identification of the body by the constable-P.W.9, conducted autopsy at about 10.15 a.m. on 18.10.1998 itself, which revealed the following injuries: circular stab wound 5 cms. Diameter on the front and lateral aspect of right side neck with a tag of skin 3 cms. in the lateral aspect. The wound is 7 cms lateral to the midline and 3 cms. below angle of right side lower jaw.

The margins of the wound are mildly lacerated and bruised. External castoid found cut 4 cms from the bifurcation and again 2 cms above it. Total depth of wound track is 5 cms."
Dissecting the body further and analysing the cause of death, P.W.7 issued Post-Mortem Certificate-Ex.P.8, giving opinion on the basis of Exs.P.9 and P.10 also, that the deceased would appear to have died of shock and hemorrhage due to the stab injuries sustained by him over the neck.

(ix) In continuation of the investigation, P.W.11 arrested the accused and on the basis of the confession given by him viz. Ex.P.4, he recovered M.O.1 under the cover of mahazar-Ex.P.5. Thereafter, the investigation was entrusted to P.W.12, who had examined some of the witnesses, giving requisition for sending the material objects for chemical examination. Thereafter, the case was taken by another investigating officer-P.W.13, who felt a case has been made out, resulting the final report, followed by trial.

6. Heard Mr.B.Ramamoorthy, learned counsel for the appellant and Mr.J.C.Durairaj, learned Government Advocate (criminal side) for the respondent/State.

7. The learned counsel appearing for the appellant attempted to assail the conviction and sentence on the following grounds viz.:

(i) that there is inordinate delay in preferring the complaint, which is not at all explained not considered by the trial Court;

(ii) that it is strange to think even, that instead of the person who had witnessed the incident, another person who has not seen the occurrence preferred the complaint receiving information from the so-called eye-witness, which is against all probabilities, creating doubt;

(iii) that the oral evidence of P.W.2 is against all probabilities, having self-contradictions, destructive in nature and in this view, he is undependable and his evidence has to be totally ignored; and

(iv) that if the oral evidence of P.W.2 is eschewed, there is nothing on record to prove the involvement of the accused in committing the alleged murder, which was not at all considered by the trial Court.

8. Elaborating the above points, taking me through the evidence in detail, a submission was made for the relief of acquittal, which was opposed by the learned Government Advocate, as if there is no reason to disbelieve the oral evidence of P.W.2, whose evidence alone is sufficient to convict the accused, thus supporting the conviction and sentence passed by the trial court.

9. It is not in dispute that one Mohan died due to stab injury, sustained by him over the right side of the neck, which is well spoken to by the Post Mortem Doctor, who has been examined as P.W.7. The Doctor has spoken about the injuries noticed by him and has assigned the reasons for the cause of death, which are not very much challenged, though the actual time of death was disputed, as seen from the cross-examination. In this view, concluding that Mohan died due to homicidal violence, it is to be seen, who is the cause for his death.

10. As per the case of the prosecution, the incident had taken place on 16.10.1998, at about 9.30 p.m. within the Corporation limits of Coimbatore. The scene of crime is also adjacent to busy localities such as Nanjappa Street and Lajapathiroy street. The time of incident also is not odd hours, whereas it was only 9.30 p.m., where there could be normal traffic and movement of the people also. If the incident had taken place, as described in the final report and as attempted to be spoken to by P.W.2, nothing would have prevented P.W.2 in preferring the complaint immediately to

the police station, which is very near also. In this case, for the reasons best known to the respondent or P.W.2, Ex.P.1 complaint came to be lodged before P.W.10 only on 17.10.1998 at about 9.30 a.m. Thus there is a delay of 12 hours. If this delay had occurred, in the normal course, which could be self-explanatory or explained by the prosecution, it may not have the effect of erasing the prosecution case, even creating any doubt. But, in preferring Ex.P.1, there are unexplained circumstances, coupled with improbabilities as well as against the natural conduct of a human being. If this is read with the delay, as rightly submitted by the learned counsel for the appellant, it should have its role of creating a doubt, which should lead to the irresistible conclusion, that the accused must be given the benefits of the same.

11. Admittedly, the so-called eye-witness viz. P.W.2 has not preferred any complaint. It is the case of the prosecution, that P.W.2 reported the matter to P.W.1, who in turn went to the police station and preferred Ex.P.1 complaint, that too, directing P.W.2 to be present near the body. Many people might have noticed the presence of the dead body, since it is not the case that the scene of crime is an abandoned one having no access or there was no access to it by the general public. But, the evidence would go to show that people used to go to that area at least to ease out, thereby showing, the movement of the pedestrians. No reason is forthcoming, why no one has reported the matter to the police. It can be said, for that, prosecution cannot be found fault with and it can be accepted, provided the conduct of P.W.2 is acceptable.

12. P.W.2 is the native of a village called Seeliyur, which is 13 kms. from Kaaramadai. Kaaramadai is 27 kms. from Coimbatore, as admitted by P.W.2. It is his evidence that he used to go daily to the village and come to Coimbatore, to attend the duty of Kalasi. Thus, it is seen, he has to cross 40 kms. from Coimbatore, to reach his village and again has to return to Coimbatore, covering the same distance. It is not the case of P.W.2, that the deceased is not known to him, or he is a stranger, in whom he is not interested. It is an admitted fact that P.W.2, accused and the deceased were working together as Kalasis and they used to share bottles as well as collections also, thereby showing their closeness and intimacy. This being the position, if, in the presence of P.W.2, the accused had attacked the deceased or stabbed the deceased, with the broken tube light, a question should arise normally, whether P.W.2 would have left the place very coolly, as if nothing had taken place, that too to his native place, not informing to anybody, including his friend P.W.4-Govindaraj. For leaving the place, without taking any further step, after knowing that his friend died, P.W.2 has not assigned any reason at all. After 9.30 p.m., if it is to be assumed that he had been to his native village, then returned in the next day morning, as rightly submitted by the learned counsel for the appellant, even it may not be possible for him to reach Coimbatore at about 6.30 a.m. or 7.00 a.m., since there is no acceptable evidence about the availability of transport also. This improbability creates indelible doubt about his presence at the time of the incident.

13. No reason is assigned, why P.W.2, instead of preferring the complaint himself, sought the aid of P.W.1. There is nothing wrong, if a person sought the aid of other, if it is not possible for him to do a thing by himself. In this case, after all, if P.W.2 had witnessed the incident, he ought to have gone to the police station informed the police, as to what had happened, who would have recorded the same, since law mandates. Therefore, it should be construed, preferring the complaint was within the power or the capability of P.W.2. This being the position, no reason is offered, why P.W.2, should reach P.W.1 and inform about the incident, which also creates a doubt, as justifiably claimed by the learned counsel for the appellant.

14. P.W.1 is not the close friend of P.W.2, to whom he can share the confidence or expose certain things which he had seen previously. It is admitted by P.W.1 himself, that he has not seen Ponraj-P.W.2 often and he had seen him occasionally on his coming and going. It is also admitted by P.W.1, that he is not the local leader, thereby showing, generally, he may not evince interest in the public

or the incidents taken place within that area. That is why, he himself has stated, that he used to care his own work alone and would not interfere in any other matter. On the basis of the above evidence, if we scan the evidence of P.W.2, to ascertain whether he would have gone to the house of P.W.1, seeking his aid, the answer must be a big 'NO'. Generally, a person who had witnessed a grave offence, if at all, would share that with a person of confidence, having close association and not to a stranger, as in this case. Thus, viewing the case from this angle, it is highly doubtful, whether P.W.2 would have witnessed the incident. If he had witnessed the incident, whether he would have informed the same to P.W.1 on the next day, without bothering to inform on the same day itself, also is a doubtful circumstance. It is not known why P.W.1 was introduced as a middleman to prefer the complaint, when, as said above, P.W.2 himself would have preferred the complaint.

15. Then, coming to the actual evidence of P.W.2 also, by going through the oral testimony very carefully, I find much unnaturality, improbability, to doubt about his presence at the time of the incident. P.W.2 would state, that on the date of the incident, himself, accused and the deceased had consumed liquor. The lower Court also very much relied upon this circumstance, to bring the offence, within the ambit of Section 304(II) IPC, as if the accused should have committed the offence, under the influence of intoxication. If this decision is to be arrived at, then, the post-mortem should reveal, about the presence of alcohol, in the stomach contents of the deceased. The Post-Mortem Doctor has not smelt any alcohol in the contents of the stomach and the chemical analysis report also does not reveal about the presence of alcohol, in the stomach contents of the deceased. Within 2 or 3 hours from the time of consuming alcohol, this incident had taken place as per the case of prosecution and before the complete digestion of the alcohol, the deceased succumbed to the injury also. Therefore, in the normal course, if the deceased had consumed liquour along with others, then the presence of alcohol in the stomach contents of the deceased should have been available and noted, which is absent, thereby belying the oral evidence of P.W.2.

16. As I have already adverted to above, since the deceased is a close friend of P.W.2, he should have reacted spontaneously, aggrieved by the conduct of another friend viz. the accused, in causing the death of Mohan. But, admittedly, as submitted by P.W.2, he went to his native place coolly, on his own, as if nothing had taken place, which I should say, because he did not know what had happened to Mohan, and that is why he would have gone to his place on his own. If the above said inaction on the part of P.W.2 is read with delay in preferring the complaint, that too, considering the complaint given by a stranger viz. P.W.1, who is not well acquainted with P.W.2, a doubt arises, spontaneously, in my mind, doubting about the very genesis of the case itself and in this view, I should say, the prosecution has suppressed the real facts and that is why, this kind of improbabilities are available.

17. In this case, there is one strong circumstance, creating some doubt about the involvement of the accused, in the incident, which was taken primarily to convict the accused by the trail Court. It is the evidence of P.W.2 that the deceased, at the first instance, attacked the accused, causing head injury, using the fused tube light, then alone, the accused stabbed the deceased, using the same broken tube light. When the accused was examined under Section 313 Cr.P.C. for question No.(5), he has stated that the deceased (probably) hit him with tube light at the work place, for which he went to the police station to prefer a complaint. Taking into account this admission made by the accused, then connecting the evidence of P.W.2, as if only in retaliation, this accused should have stabbed the deceased, a conclusion had been reached, convicting the appellant/accused under Section 304(II) IPC. Though the above said circumstance, appears to be strong; in the absence of any corroborative evidence, the explanation given by accused while examined under Section 313 Cr.P.C. alone cannot be taken as admission of guilt, as if this incident took place at the same time. Therefore, in my considered opinion, the conviction and sentence slapped upon the accused/appellant cannot be sustained on this ground alone.

18. If it is the case of the accused, in the place of scene of crime, he was attacked by the deceased, then retaliated it can be taken as admission of the incident. But, he has specifically stated that he was assaulted 'in the work place'. The Doctor, who examined the injury upon the head of the accused also noted that it was a heeled injury, thereby showing, there would not have been any possibility for this accused to sustain the injury on the same day in the same occurrence. Therefore, convicting the accused, as if he had admitted the incident, in my considered opinion, is not possible. Thus, in this case, the oral evidence of P.W.2, in my considered opinion, is undependable and therefore, the same is required to be eschewed. If the oral evidence of P.W.2 is eschewed, practically, there is nil evidence to connect the accused with the offence.

19. The alleged recovery of M.O.1, at the instance of accused, also appears to be unbelievable. If the accused had stabbed the deceased, using the broken tube light, there would not have been any necessity for him to role it in the shirt, then concealing it elsewhere. The shirt, though recovered does not contain the blood group of the deceased, so as to say emphatically, that the accused should have taken the broken tube light, which was used by him to assault him, then stabbed the deceased. P.W.2 also has not identified the dress recovered by the police, as if the same was worn by the accused at the time of the incident. P.W.4 also has not identified either the weapon or the shirt. In this view, the recovery also failed to connect the accused with the incident. But, unfortunately, taking into account the answer given by the accused during the examination under Section 313 Cr.P.C., alone which, if at all, may create a doubt which will not take the place of proof, the trial Court has convicted the accused for which I am unable to affix my seal of approval.

20. In the light of the above discussion, I conclude, the prosecution has failed to bring home the guilt of the accused beyond all reasonable doubt, whereas many doubts had arisen on their own and giving the benefit of doubt, I am constrained to allow this appeal, acquitting the accused, concluding the charge is not proved.

21. In the result, the appeal is allowed, setting aside the conviction and sentence passed against the appellant/accused for the offence under Section 304(II) IPC by the learned II Additional Sessions Judge, Coimbatore, in Sessions Case No.149 of 2000, dated 18.10.2000.

The accused/appellant is found not guilty of the offence under Section 304(II) IPC and he is accordingly acquitted. The fine amount, if any, paid by the appellant/accused shall be refunded to him. The bail bonds of the appellant/accused shall stand discharged.

Rao

To

1.The II Additional Sessions Judge,
Coimbatore.

2.The Inspector of Police,
B-3, Kattur Police Station,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.